

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD ANGINO and ALICE ANGINO, <i>et al.</i>,	:	CIVIL ACTION NO. 1:15-CV-2105
	:	
	:	(Chief Judge Conner)
Plaintiffs	:	
	:	
v.	:	
	:	
BB&T,	:	
	:	
Defendant	:	

ORDER

AND NOW, this 16th day of August, 2016, upon consideration of the report (Doc. 21) of Chief Magistrate Judge Martin C. Carlson, recommending the court grant the motion (Doc. 12) to dismiss by defendant BB&T and deny plaintiffs' motion (Doc. 16) for preliminary injunction, wherein the magistrate judge opines that: (i) plaintiffs fail to state a viable claim for breach of contract; (ii) plaintiffs' assorted references to contractual doctrines of "reasonable expectations, waiver and estoppel, coercion, and adhesionsary terms" cannot cure the factual deficiencies undergirding plaintiffs' breach of contract claim and do not otherwise constitute independent causes of action; (iii) plaintiffs' purported claim for breach of the contractual duty of good faith and fair dealing fails as Pennsylvania law does not recognize a separate and freestanding good faith claim absent a demonstrated breach of an underlying contract; (iv) plaintiffs' claim for civil conspiracy against BB&T, the sole remaining defendant in this case, is defeated by plaintiffs' failure to identify a second party to the alleged conspiracy; and (v) plaintiffs' motion for preliminary injunctive relief is deficient in form for failure to file a supporting brief

as required by Local Rule of Court 7.5 and also in substance given the foregoing recommended disposition of plaintiffs' claims, and the court noting that plaintiffs have filed objections (Doc. 22) to the report, see FED. R. CIV. P. 72(b)(2), wherein plaintiffs restate many of the same arguments raised in opposition to BB&T's underlying motion, concede their civil conspiracy claim must be dismissed, fail to defend their request for injunctive relief, and broadly request leave to amend their pleading, (see generally Doc. 22), and the court further noting that said objections have been fully briefed by the parties, (Docs. 22, 24, 25), and, following a *de novo* review of the contested portions of the report, see Behar v. Pa. Dep't of Transp., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing 28 U.S.C. § 636(b)(1)(C); Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989)), and applying a clear error standard of review to the uncontested portions, see Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999), the court finding Judge Carlson's legal analysis to be thorough, well-reasoned, and fully supported by the record, and finding plaintiffs' objection to the report's ultimate recommendations to be without merit, but the court further concluding, in answer to plaintiffs' plea for leave to amend, that plaintiffs should be afforded one final opportunity to amend their pleading to the extent they are able to

cure the deficiencies in their breach of contract claim, see FED. R. CIV. P. 15(a); see also Arthur v. Maersk, Inc., 434 F.3d 196, 204 (3d Cir. 2006), it is hereby ORDERED that:

1. The report (Doc. 21) of Chief Magistrate Judge Carlson is ADOPTED.
2. BB&T's motion (Doc. 12) to dismiss is GRANTED and plaintiffs' complaint (Doc. 1) is DISMISSED as follows:
 - a. Plaintiffs' breach of contract claim (Count I) is dismissed without prejudice.
 - b. Plaintiffs' civil conspiracy claim (Count II) is dismissed with prejudice.
3. Plaintiffs' motion (Doc. 16) for preliminary injunction is DENIED.
4. Plaintiffs are granted leave to amend their pleading within twenty (20) days of the date of this order, consistent with paragraph 2 above and the report (Doc. 21) of Chief Magistrate Judge Carlson. In the absence of a timely filed amended complaint, Count I will be dismissed with prejudice and the Clerk of Court will be directed to close this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania